THE

RECONSTRUCTIONIST

DEDICATED TO THE ADVANCEMENT OF JUDAISM AS A RELIGIOUS CIVILIZATION, TO THE UPBUILDING OF ISRAEL'S ANCIENT HOMELAND, AND TO THE FURTHERANCE OF UNIVERSAL FREEDOM, JUSTICE AND PEACE.

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EDITORIALS

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THE SOCIETY FOR THE ADVANCEMENT OF JUDAISM

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THE RECONSTRUCTIONIST POSITION

WE approach our task from the point of view of Judaism as a religious civilization. We envisage Judaism as the proper concern of all Jews, religious and unreligious, conservative and radical . . .

IN affirming that Judaism is a civilization we give emphasis to the fact that it includes . . . communal organization, language, law, art, mores, customs, as well as religion. Moreover, all of these elements are organically related to each other; to omit any of them is to distort Judaism. All of them are functions of the group life of Israel and cannot be maintained unless we maintain the unity and integrity of the Jewish people and the continuity of its spiritual efforts.

WE believe that the material and spiritual welfare of the Jews can be achieved only through Jewish communal organization . . . We favor the establishment of Jewish communal life in America, democratically administered and organized in such a manner as to include all Jews who wish to identify themselves with the Jewish people, regardless of what their personal philosophy may be.

IN affirming that Judaism is a *religious* civilization, we recognize first, the historic fact that the God idea has dominated the entire pattern of Jewish life in the past, and that continuity with our past is impossible without giving to religion a position, if not of primacy, at least of *primus inter pares;* and secondly, the social fact that a mature and complete civilization is bound to find expression in the idea of God and in forms of religious worship in which the hopes and ideals of human life are rendered articulate. It is that very sense of need for religion that impels us to reinterpret the traditional beliefs in keeping with what for us must be a tenable world outlook, and to revise and develop the traditional usages in keeping with spiritual needs which we can genuinely experience.

WE consider the establishment of Palestine indispensable to the life of Judaism in the diaspora. We seek to enable Jewish civilization so to root itself in the soil of Palestine as to make of the land the cultural center for Israel's intellectual and spiritual rebirth. We oppose any attempt to render Palestine the object of imperialist aims or the victim of private profit-seeking. We endorse every effort toward the establishment of a cooperative commonwealth in Palestine based upon social justice and social cooperation . . .

WE are opposed to fascism in every form. We object to any philosophy of government which seeks to curtail the rights of individuals to the free pursuit of personal salvation through participation in any religious or cultural activity, or through affiliation with any national or ethnic group . . . Recognizing the horror and irrationality of war as a means of adjusting conflicting interests, we shall support every effort looking to the perfection of machinery for the peaceful adjudication of such conflicts and to the utilization of such machinery as exists, wherever possible. Under no circumstances shall we give countenance or support to an imperialistic war that is designed to advance the interests of exploiting and oppressing classes . . .

SOCIAL righteousness is possible only upon the establishment of a cooperative society, the elimination of the profit system, and the public ownership of all natural resources and basic industries. Until these objectives are achieved our sympathies and our support go to labor in its struggle with its employers for a more equitable distribution of the income of industry, and in the assertion of its right to organize for the protection of its interests without interference from its employers.

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EDITORIALS

Halting Between Two Opinions

WE greet with joy the statement issued by the two hundred and forty-one Reformist rabbis expressing "agreement with the principles and ideals of the Palestine Labor Movement" and declaring that "Liberal Judaism, in addition to its general sympathy with the rehabilitation of Palestine as the Jewish homeland, should feel an especial enthusiasm for Labor Palestine." These rabbis recognize correctly that time has exposed the essential fallacy of the original Reformist "mission theory." No longer can we assume the pretentious role of spiritual geniuses scattered as a minority throughout the various nations to convert them to the lofty ideals of justice and righteousness.

If as a people we have the vision of a just society, it is only by the realization of that vision in a Jewish society that our contribution to the world can be made. Such a Jewish society we are striving to create in Palestine. There we are attempting to express that social idealism, which for so long has remained in a state of suspended animation, in a concrete social program for the establishment of a cooperative commonwealth.

But there is a fly in the ointment. The rabbis state their "views in this resolution as individuals," and not as members of the Central Conference of American Rabbis with which they are affiliated. Apparently, the Conference is not even at this time prepared to endorse Zionism officially. This reservation reveals the unwholesome situation that prevails in the ranks of Reformism. On the one hand, most of the constituents of the official Reformist organization come from traditionally Jewish homes, and have themselves received an intensive Jewish training. They are thus inclined to be sympathetic to a constructive program for a fuller and richer Jewish life. On the other hand, they form part of a movement which has become crystallized into an orthodoxy of its own, with a philosophy of Jewish life which is untenable and a program which is empty and sterile.

These leaders find themselves in an anomalous position. As this recent resolution proves, they feel an affinity to cultural Jewish values and Zionist aspirations; but in order to express this affinity, they must go outside their official organization to do so. How long will they permit this anomaly to continue? One important prerequisite to the reconstruction of Jewish life is the proper alignment of forces which would release the creative powers latent in it. Without the proper align-

ment, we are cramped and ineffectual. Leaders must be identified with organizations which represent their programs; otherwise they compromise themselves and their organizations.

The two hundred and forty-one rabbis constitute too large a group within the Central Conference of American Rabbis to be called "insurgent" any longer; they are a majority. It is high time that they cease to halt between two opinions. Either they must attempt to commit the Reformist rabbinate to a program in keeping with their own realistic and constructive attitude toward Judaism, or they must take vigorous steps to establish a new alignment of forces in American Jewish life.

Where Jews Lagged Behind

THE hearings recently conducted in Albany on the proposed ratification of the Child Labor Amendment have shown that the Jews lag behind the Protestants in the effort to translate religion's social ideals into a program of specific social action. The amendment, if enacted into law, would make it possible to rescue from exploitation America's children who, as a cheaper labor commodity, are being used in a number of industries, including iron, steel, and coal, to do the work for which a more adequate compensation would have to be paid to unemployed adults. The Protestants, to their credit, fought vigorously for ratification. The Federal Council of the Churches of Christ, speaking for the laity and the clergy of twenty-six Protestant denominations in this country, issued a strongly worded public statement supporting the amendment, and a spokesman of the Council, Bishop Charles K. Gilbert, presented this statement at the hearings in Albany.

The Jews, however, were not so outspoken. The Reformist rabbis of the country did, indeed, send a representative, Rabbi William F. Rosenblum, who pleaded in their name before the Albany legislators, for ratification. But there was complete silence from the Conservative and Orthodox rabbinical groups, as well as from our three organizations of Jewish laymen—the Reformist Union of American Hebrew Congregations, the Conservative United Synagogue of America, and the Union of Orthodox Jewish Congregations. It is particularly difficult to justify the silence of the Conservative rabbinate since its Committee on Social Justice did, on a previous occasion, endorse the amendment.

The Albany committee has, we understand, decided to shelve the amendment. The principal arguments of the amendment's opponents, that it is a scheme of communistic Russia, that it would nationalize our children, that children have a God-given right to toil, etc., are clearly fantastic, and were certainly unworthy of consideration. The fears of certain Catholics that the child "labor" which the amendment seeks to regulate might be understood elastically, to include education, and that it would lead to governmental interference in the home, is obviously far-fetched, as Father John A. Ryan, himself a leading Catholic, has testified. What no doubt proved most convincing was the pressure of our leading industrialists who profit from child labor. If the amendment is to be ratified, America's forces of social idealism will have to battle more militantly in the future than they have done in the past. Will the organized bodies of religious Jewry do their share?

A Rebuke to Jewish Cowardice

FOR the first time in the history of American Jewry, Jews have begun to doubt the wisdom of accepting public office. Heretofore most Jews were pleased with elevation of one of their number to high political position; they felt that it reflected favorably on the Jewish group as a whole. But today many Jews are obsessed with a strong sense of insecurity. They tend to believe that it is not quite wise for Jews to be too conspicuous, and that in consequence Jews ought not to hold im-

portant positions in the government. The protagonists of this doctrine of self-concealment argue that the Jew in high office invites the jealousy and the resentment of the non-Jew, that he helps to actualize a potential anti-Semitism. Against this counsel of defeatism the American Jewish Committee has recently spoken out boldly and courageously.

With the attitude of the Committee, we are in complete accord. In the first place, it is a mistake to believe that the actions of individual Jews affect decisively either the growth or the decline of anti-Semitic movements. Mass prejudices spring from factors that run much deeper than individualities—from inherited social attitudes, group psychoses, and economic maladjustments. It would, then, be pure folly for the Jew to withhold himself from public office in the hope of obviating anti-Semitic prejudice.

But further, the advocates of this policy of self-suppression have failed to consider the logical implications of their position. For if it is wise for the Jew to withdraw from public affairs in order to mitigate anti-Semitic prejudice, he should, by the same reasoning, withdraw from those branches of commerce, industry and the professions in which he has been conspicuously successful. The logic of Jews running to cover is then the logic of self-destruction and suicide.

And it is an undignified counsel—this which advocates that the Jew make himself as inconspicuous as possible for the sake of his own safety. It demands that Jews walk through life on tip-toe, always in the fear that they may offend the non-Jew by their very presence. Nothing could be more calculated to destroy the inner morale and the self-respect of Jews.

But it is not only suicidal and cowardly for Jews to yield to an anti-Semitic threat. It is also a betrayal of the ideals of American democracy. America represents the vision of a republic of free individuals who shall be equal in the eyes of the law and who shall have equal opportunity for political preferment. For the Jew to retreat from American public life in order to obviate anti-Semitism would be an attempt to save his own skin at the cost of his loyalty to fundamental American ideals. It is perfectly possible that a wave of anti-Semitism may arise in America which will engulf American life. It is within the realm of possibility that a nationalist reaction will yet destroy that ideal which is most distinctively American. It is part of our duty as Jews who are American citizens not to be partners to such a crime.

To be sure, a Jew in public office is in a difficult position. His mistakes and his political sins will be interpreted by the anti-Semite as a demonstration that every Jew is dishonest and unreliable. But this means only that the Jew in public office is under a greater responsibility for rectitude. The prestige of his group depends on his actions. It does not mean that the Jew shall not have the right to hold public office. This is the only position which is possible in practice, which preserves Jewish self-respect and which is in harmony with the best in American life.

Is God Hardening Capitalism's Heart?

IT is now a clearly accepted social principle among all right thinking groups that the least that civilized society can do is to take care of its human backwash. This human backwash is represented by men and women who endure periodically the rigors of unemployment, who have to become the wards of charity whenever they are ill, and who face an old age filled with insecurity because of the inability of people to save for adequate old age security under present low wages.

The Roosevelt administration has promulgated a social security program

which constitutes the first Federal attempt in the United States of America to institute social insurance. The proposed old age pension law recognizes that the immediate problem of the aged is not an insurance problem, but one of relief. There is therefore provision for a contributory old age insurance system for people who are at present well below the sixty-five year mark. The Federal Administration's insurance bill is an adaptation of the original Wagner-Lewis plan which taxes payrolls and then makes a return to those states which institute satisfactory unemployment insurance laws. Nothing has been done in the field of health insurance.

For a while the New Deal's social policies were tolerated by the reactionaries. At present, with some indications of business improvement, there is already a rising wave of protest against what the rugged individualists term "undue governmental paternalism."

The opposition to social insurance is almost incomprehensible. It is as if God were hardening capitalism's heart, if it has a heart, to precipitate its destruction. Private charity, long the idol of those who would heal by that method the ills inflicted by society, has been increasingly unable to cope with the demands of the situation. Apple-vending, or spreading employment at starvation wages, which were the only plans which the great minds of ruggedly individualistic business could evolve in the crisis through which we are passing, only served to intensify the economic and social distress. Long before the fatal days of October 1929, our modern machine economy was making it impossible for people over forty-five or fifty, once out of work, to get jobs. Laborers who had illness in their family never had a chance to save enough money to prepare for that illness. Charity wards in hospitals were packed to the limit, and many are the instances where people in great need of hospitalization were turned away because of the dearth of free beds. That such a situation has grown much worse since 1929 is obvious.

There is considerable doubt in some quarters whether our present social order can ever provide *economic* security. There is no doubt, however, that if it is to survive, it will have to provide *social* security. In other words, while it cannot always guarantee men the right to work, it must immediately take steps to provide for those for whom it cannot give work. On no other basis can any system be permitted to endure. The leaders of the New Deal who are anxious to preserve the essential economic framework of capitalism clearly see that it has to be socialized to some extent. Failure to do this means inevitably, at first, Fascism and, ultimately, Communism.

Social insurance in the form of unemployment insurance and old age pensions does not heal the basic weaknesses of our economic society. It is nevertheless the minimum of decent ethical requirements. It is only the beginning of a social security program. Society owes an individual the right to protect his health as well as the right to sustenance when he is put out of a job through no fault of his own. The time is past when corporations could unchallenged, put aside enormous reserve funds to protect their investors in slack seasons and, at the same time, throw their employes on the bounty of private charity.

Where is the money to come from? The answer is clear. It must come from the beneficiaries of the system which creates these social problems. Social conscience and basic morality demand that those who profit from such a system must pay the bill to protect, in adequate manner, the social demands of those whose toil makes the wheels go round.

Human Rights vs. Property Rights in Jewish Law

By EUGENE KOHN

IN periods of crisis such as the days through which we are passing, tradition affords little or no practical guidance for a solution of social problems. Traditional laws originated in response to social conditions radically different from our own. Therefore no economic institutions or social controls that arose before the machine and power age can have any direct relevance to modern social problems. But traditional ideals of social behavior, while they may be of no use in suggesting practical measures of social adjustment, are not without value as affording important criteria for evaluating social programs. Moreover, the example of the way in which our people in the past sought to realize these social ideals affords encouragement to us. It revives in us the faith that our adjustment to the ills of human life need not be one of resigned submission, but may well be one of intelligent protest and purposeful reconstruction. The prophets and law-givers of the past found in their participation in these social forces a sense of life's worth and holiness. Their example encourages us to similar efforts in the conviction that through them we too will be saved from the sense of defeat and frustration and we will be enabled to see divine purpose and meaning in life.

I

The spiritual problem involved in the present social crisis is: how can we, in a machine-age, so organize our economic processes and our political controls that the machine shall not mechanize human beings, making them work, when they are able to find work, at joyless and meaningless tasks to which they are held by the fear of unemployment and poverty? How shall we, on the contrary, release them from drudgery and enhance their creative powers and their sense of human worth and dignity? It is a problem of insuring the sacredness of human personality and asserting the primacy of human rights against any alleged property rights that conflict with them. Although the measures which must be taken in our day to realize this ideal are as unprecedented as the economic situation which creates the need for them, the ideal itself is not new. In every generation, the personal rights of the economically weak come into conflict with the traditional prerogatives of the economically strong, which are then regarded by those in power, and sometimes even by the exploited class, as fundamental property rights. The history of Jewish tradition reveals, however, in every age the earnest attempt of the leading spirits among our people to champion the personal rights of the poor and oppressed against the abstract, legalistic claims of the possessing classes.

In the Jerusalem Talmud (Nedarim 9, 4), the most significant ethical maxim of the Torah is declared by Ben Azzai to be, not "Thou shalt love thy neighbor as thyself," but "This is the book of the generation of Man . . . in the likeness of God made He him." The conception that there is something divine in man which must be given free play in order to fulfill the creative purpose of God made Jewish religion a force for emancipation. That is why, according to Jewish tradition, God manifested Himself as the Emancipator even before He manifested Himself as the Law-giver. The motive for the Exodus is based on the conception that only free men can properly serve God. "For the children of Israel are servants unto Me; they are My servants" (Lev.

25:55); to this the rabbis add the pertinent comment, "And not the servants of servants" (Kid. 22b). One wonders how those who maintain that religion must necessarily function as the opiate of the masses, would interpret such religious utterances as these? The fact is that a study of the history of Jewish religion would show that it functioned more frequently as a tonic than as an opiate, giving tone and vigor to the morale of the Jewish people in its efforts to make life conform to the highest human aspirations.

In our study of the efforts made to embody in law the principle of the sacredness of human personality and the priority of personal rights over property rights, we must bear in mind the distinction between *agada* and *halakhah*. The *agada* may give us counsels of perfection, but the *halakhah* must reckon with an actual social situation. Law cannot create a social order by fiat, but must of necessity compromise with the existing order. The significance of the legal institutions of any age must therefore be judged by their *chiddushim*, their points of departure from the precedent conditions. If we view Biblical and post-Biblical law from this angle, we shall discover that the social ideals expressed in *agadoth*, such as we have just quoted, actually functions in the social life of the Jewish people and were embodied in their laws. We cannot, of course, make anything approaching an adequate survey of the whole field of Jewish law for our present purpose; but we can call attention to those important applications of the principle of the primacy of personal rights in respect to (1) the definition of property rights, (2) interest and profit, and (3) the rights of employer and employed.

II

Property Rights in Jewish Law

The rise of capitalism is a comparatively recent development in human history. We cannot therefore expect the Bible to draw the distinction so basic to our modern problem between wealth that is used as capital and wealth that is used for purposes of consumption. But, inasmuch as all capital is derived from the application of labor to land, it is interesting to note that the laws of the Bible do not regard property in land in the same light as they do property in consumers' goods.

In the 25th chapter of Leviticus, we are told to observe every fiftieth year as a jubilee year during which the land reverts to its original owners or their heirs. "In this year of the jubilee, ye shall return every man unto his possession. And if thou sell aught unto thy neighbor, or buy of thy neighbor's hand, ye shall not wrong one another. According to the number of years he shall sell unto thee. According to the multitude of years thou shalt increase the price thereof, and according to the fewness of the years thou shalt diminish the price thereof; for the number of crops doth he sell unto thee" (Lev. 25, 13-17). And, again: "And the land shall not be sold in perpetuity; for the land is Mine; for ye are strangers and settlers with Me. And in all the land of your possession ye shall grant a redemption for the land" (Lev. 25, 23-24).

It is obvious that the intent of these laws is to prevent monopolistic control of the fruits of the land from passing into the hands of a small landed class, because the paramount title to the land is God's and all men may claim an equal share in His bounty. What is significant is not alone the reversion of the land to its original owners, but the method of evaluation of land in the case of sale, which was based entirely on the value of the crops that the land was capable of producing until the jubilee. This evaluation rendered impossible the holding of the land for speculative purposes.

While it is clear from the above that the law recognized the public interest in land as paramount over the claims of the occupant, other passages show an earnest solicitude for the property right

of the individual in those goods that represent fundamental personal needs.

"No man shall take the mill or the upper mill-stone to pledge; for he taketh a man's life to pledge." (Deut. 24, 6). This law, as interpreted in the *Mishnah* (B.M. 115a) was not limited in its application to the mill alone, but to "whatever is needed in the preparation of the food necessary to sustain life," to which the words of the text, "for he taketh a man's life in pledge" might be construed as applying.

We read further, in the same chapter of Deuteronomy, "When thou dost lend thy neighbor any manner of loan, thou shalt not go into his house to fetch his pledge. Thou shalt stand without and the man to whom thou dost lend shall bring forth the pledge without unto thee. And if he be a poor man, thou shalt not sleep with his pledge; thou shalt surely restore to him the pledge when the sun goeth down, that he may sleep in his garment, and bless thee; and it shall be righteousness unto thee before the Lord thy God" (Deut. 24, 10-13).

Note that the man's personal need for his garment to protect him from the cold at night, and for the privacy of his home, is given priority over the more abstract and technical claim of the creditor to the object pledged as security for his loan. In other words, personal rights are given priority over property rights, and the possession of those properties which are indispensable to human living is looked upon as a personal right.

III

Profit and Interest in Jewish Law

The laws regarding profit and interest in the *halakhah* derive mainly from the Biblical prohibition of usury. In the pastoral and agricultural economy contemplated in Biblical law, there was, of course, no problem of profit, since production was more for direct consumption than for exchange, and only surplus goods were exchanged. A problem of usury, however, did exist. Loss of crops or cattle through disease, weather conditions or other natural causes, might put a man in want and in the necessity of borrowing. The creditor, if not inhibited by law, might take advantage of this situation to exploit the labor of the debtor by exacting usurious returns. Later, a merchant class did develop and the rabbinic *halakhah* extends the usury laws of the Bible to regulate commercial relations as well. Let us examine some of these laws to see whether they are designed to insure to the creditor or investor a return on his money, or whether their tendency is rather to restrict such a return and to prevent the wealthy from using their riches to secure control over the labor of others.

The basic laws in the Bible with regard to usury are the following:

"If thou lend money to any of My people, even to the poor with thee, thou shalt not be to him as a creditor; neither shall ye lay upon him interest." (Ex. 22, 24).

"And if thy brother be waxen poor, and his means fail with thee; then shalt thou uphold him: as a stranger and a settler shall he live with thee. Take thou no interest of him nor increase; but fear thy God; that thy brother may live with thee. Thou shalt not give him thy money upon interest, nor give him thy victuals for increase." (Lev. 25, 35-37).

"Thou shalt not lend upon interest to thy brother: interest of money, interest of victuals, interest of anything that is lent upon interest. Unto a foreigner thou mayest lend upon interest; but unto thy brother thou shalt not lend upon interest." (Deut. 23, 20-21).

The permission to exact interest from a non-Jew is, of course, natural in view of the absence of any reciprocal provision forbidding the non-Jew to take interest from a Jew. It is one of the ironies of history that the church's

acceptance of the Jewish prohibition of interest, together with the growing need for credit that kept pace with the expansion of commerce, should have forced upon the Jewish people the position of usurers to Christendom at the very time that the Jews themselves in their own communities were struggling hard to maintain both the letter and the spirit of the Biblical prohibition of interest.

Throughout the period of the second commonwealth and, even after the Dispersion until the late Middle Ages, these laws prohibiting all manner of interest as between Jew and Jew were strictly enforced. These laws were enforced despite the fact that during this period, the Jews had, to a very great extent, been transformed from a rural people living on an agricultural economy to an urban people living on a money economy. Indeed, even after that time, when the changes in the economic structure of Jewish life made the extension of credit a normal business transaction rather than a philanthropy, the prohibition of interest, modified to suit the new conditions, still remained in effect.

The legal device first applied by the rabbis to make possible credit transactions for the financing of business was the expedient of considering the creditor as the silent partner in the business of the debtor. Nevertheless, inasmuch as the debtor's administration of the fund might be construed as a fee to the creditor for investing his money in the business, and hence as a form of interest, Maimonides, in his code, demands that the creditor reimburse him separately for this service. (Mishneh Torah, Hilkhot Shutfot, Ch. 2).

Later a form of contract known as the *sh'tar iska* was adopted, which, to be sure, dispensed with the special compensation for services rendered by the debtor in administering the fund, but which, nevertheless, avoided the actual use of interest. The contract provided that the sum advanced by the creditor be invested in the business of the debtor for a specified period of time. Up to the time that the profit on this investment amounts to a sum equal to the principal invested, it belongs to the investor though remaining in the possession of the borrower. Should there be any losses, the investor is, during this period, liable for such loss. But from the time that the investment has doubled in value to the expiration of the term specified in the contract, the money together with the accrued interest remains with the borrower to be used by him for his own profit and at his own risk. When the contract has expired he returns double the sum originally invested by the creditor. (See article on *Ribbit* in Ozar Yisrael).

These rabbinic devices may seem mere attempts to evade the Biblical prohibition of interest, but they are more than that. They are efforts to make sure that credit transactions shall be mutually advantageous to lender and borrower. They thus try to preserve the spirit as well as the letter of the Biblical law. As Epstein points out in his *Torah Teminah* (to Lev. 25, 36) the motivation of the Biblical law of interest is to be found in the phrase "that thy brother may live with thee," i.e., that the debtor may not sink to an inferior status of dependence on the creditor and subjection to his will.

As we have already pointed out, profit played no part in the pastoral and agricultural economy of the Biblical period and we cannot expect any regulation of profits in the Biblical law. Even in Talmudic times, profit in the modern sense of a return on invested capital over and above any income that a business man may claim for his personal services to the business, played no clearly defined part in the economic order. One evil of the profit system, however, early made itself felt, and that was the exploitation of the scarcity value of certain goods to make them yield a maximum of profit rather than

to insure their equitable distribution among consumers. This evil was recognized and measures taken to mitigate it. We are told that the Patriarchate appointed not only inspectors of weights and measures but also officers to enforce fair prices, although the *halakhah* seems to be that, while the courts are obligated to appoint inspectors of weights and measures, they have no such obligation to control prices. (B. B. 89a). Nevertheless the hoarding of food for purposes of speculation is unequivocally condemned (B. B. 90b) and a profit in food-stuffs in excess of one-sixth of the purchase price is definitely prohibited (B. B. 90a). An attempt is made, in the case of at least one commodity, eggs, to prohibit the mounting of costs through the piling up of middle-men's profits, by forbidding any profit on eggs except to the first merchant, who gets them direct from the farmer. Moreover, the citizens of a locality are given authority to fix prices wherever they find it expedient to do so. (Mishneh Torah, Hilkhot Mechirah, Ch. 14, Par. 1-10). In all these regulations there is implicit the thought that the possession of needed goods does not necessarily imply the right to derive from them all the profit that the traffic will bear. In any case, any misrepresentation of the value of an article offered for sale, even misrepresentation merely through overcharging and even where the misrepresentation is not deliberate, renders the sale invalid, if more than one-sixth of its market value is involved, the only exceptions being in the case of slaves, land, notes, or property dedicated to the Temple. (Mishnah, B. M. IV, 9).

IV

The Rights of Employer and Employed in Jewish Law

Until the technological developments of modern times, slavery was almost a necessary institution. Only by the hardest kind of labor could men wrest from the soil whatever was necessary to keep body and soul together. If some had not taken advantage of their superior strength or prowess to compel, organize and direct the labor of others, none would probably have been able to enjoy enough leisure to raise their own level of existence, and eventually that of many of their fellows, to a higher plane of living than that of the most primitive savages. Judaism, in Biblical days, had to accept the institution of slavery, but it was, nevertheless, in constant revolt against it and, at an early age, abolished it at least as far as the native Hebrew population was concerned.

Most eloquent of the Jewish attitude to the problem of labor is the law of the sabbath, not only enjoining rest on the seventh day upon all freemen but also obligating the freeman to permit his slaves and dependents to rest. The religious significance of the sabbath as the *zecher l'ma-aseh v'reshith* has been so much emphasized as to obscure its social significance. Yet in Deuteronomy, the motive for the sabbath as expressed in the fourth commandment of the Decalogue is: "That thy man-servant and thy maid-servant may rest as well as thou and thou shalt remember that thou wast a servant in the land of Egypt." (Deut. 5, 14-15). The Jewish sabbath is the first effort to distribute work and leisure on a democratic basis to prevent the division of society into a leisure class and a working class.

The slave was never regarded in Jewish law as a mere chattel. The killing of one's slave was a criminal offense punishable by law (*nakom yinnakem*) and only if death did not follow immediately from the assault of the master was the homicide unpunished, for then the presumption was that the master did not cause the death of his slave since he would not deliberately destroy his own property. (Ex. 21, 20-21). Again, if any master inflicted a physical injury on his servant such as the loss of an eye or a tooth, he had

to give him his freedom. (Ex. 21, 26-27).

No Hebrew could be made a slave according to the Biblical law as interpreted by the Tannaim, except if he were sold by the court in lieu of restitution for stolen property [but not in lieu of payment of the additional penal fine imposed by the law in demanding that he pay "double the amount of his theft" (Kid. 18a) or if he sold his services to pay off a debt (as implied in Kid. 14b)]. Though it is probable that at one time Hebrews were sold as indentured servants for debt by the courts even without their consent, there is no sanction for this in the Torah, and we can only infer it from references in the historical books and the Prophets. (e. g. II Kings 4, 1; Amos 2, 6). The term of service for a Hebrew bondman was limited to six years and, though he might elect to remain in permanent bondage at the end of that period, he had to bear the stigma of the pierced ear (Ex. 21, 2-6; Deut. 15, 12-18). In the Jubilee year the law provided that all Hebrew slaves were to be freed and restored to their ancestral estate (Lev. 25, 28). According to Tannaitic interpretation this applied even to the *eved nirza,* the slave who had chosen eternal bondage rather than leave his master (Kid. 28b).

When a Hebrew servant had completed his term of service, his master was required to give him a supply of meat, corn and wine to live on until he could earn something by his own free labor (Deut. 15, 13). At no time was he permitted to make him do servile work: *Lo ta-avod bo avodat eved,* (Lev. 25, 39) which was interpreted in the Sifra, "He shall not be made to carry your clothing after you to the bath house, or to help you on with your shoes." Nor was it permitted to demand too rigorous work, *avodat perech.* (Lev. 25, 46). This is interpreted in the Sifra to mean the execution of arbitrary orders as a mere assertion of mastery: "Thou shalt not say to him, 'Heat my drink for me' when thou hast no need for it, or 'Hoe the ground under this tree till I come' when thou hast no need for it." Indeed, sentiment against Hebrew slavery was so strong that the whole institution became obsolete at an early time in Jewish history.

In the Talmud the theory is expressed that, since the Hebrew slave was emancipated by the Jubilee year, the institution of Hebrew slavery was abolished when the law of the jubilee was no longer applicable (Arakhin 29a). The growth of humane sentiment leading to the abolition of Hebrew slavery is well expressed in the following *b'raitha:* "Our rabbis have interpreted the words 'that he may fare well with thee (as applied to the man who sells himself for debt) to mean: equally with thee in respect to food, equally with thee in respect to drink; that thou shalt not eat pure bread, and he coarse bread; that thou shalt not drink old wine, and he new wine; that thou shalt not sleep on a bed of fibers, and he on a bed of straw. Hence the saying: 'Whoever gets him a Hebrew slave is as one who gets him a master.'" (Kid. 22a).

We have already referred to the *agadic* conception of freedom as being a necessary condition of man's service to God. This thought is definitely associated with the law of the *eved nirza* to which we have referred in the following Talmudic homily: "'His master shall pierce his ear with an awl'. Rabbi Johannan ben Zaccai's interpretation of this passage was a jewel. 'For what reason is the ear singled out from among all the members of the body? It is as though the Holy One, blessed be He, said: 'The ear that heard my voice on Mount Sinai at the time that I said, "For the children of Israel are servants unto me: they are my servants" and not the servants of servants, and then suffers its owner to go and get him a master, deserves to be pierced.'" (Kid. 22a). In this spirit Maimonides, in his code, de-

clares that, even when the institution of Hebrew slavery still prevailed, it was forbidden for a Hebrew to sell himself and hide away the money in order later to buy merchandise or utensils or to give the money to his creditor. The only case in which it is permitted for him to sell himself in discharge of a debt is if he lacked food. (Mishneh Torah, Hilkhot Avadim, Ch. 1, Par. 1).

To be sure, the abolition of slavery applied only to the Hebrew slave. Nevertheless, even the non-Hebrew slave received some consideration from the law. If, as Sulzberger maintains, *gercha asher bisharecha* refers to the original Canaanite peasant who became a sort of serf on the estate of the conquering Hebrew, a theory for which he brings considerable evidence, (The Status of Labor in Ancient Israel, Ch. I), we must recognize in the laws enjoining us to love the stranger as ourselves, and insisting on the equality of the *ezrach* and the *ger* before the law (Lev. 19, 33-34), an extension of the principle of freedom and equality to include at least the native population of Palestine. Moreover, as we have already pointed out, even the non-Hebrew slave was not absolutely subject to the whim of his master. What is more, the fugitive slave was not to be returned to his owner, but was permitted to live with those among whom he sought refuge, a measure well calculated to enforce humane treatment of the slave (Deut. 23, 16-17).

The abolition of slavery does not, however, necessarily mean the full emancipation of the worker. There are conditions which may well be described as wage-slavery, in that the wage-worker is as limited in his opportunity for free self-expression and self-realization and as much dependent on his employer, as if he were the latter's property. Does Jewish law show any solicitude for the welfare of the *sachir* or hired servant as it did for the *eved* or bondman? It must be borne in mind that the labor problem as it exists in modern times did not exist in the same form in the pre-capitalistic era, when an artisan could own most of the indispensable tools of his craft. The smith, the carpenter, the tailor were men of respectable social status in the community during the Biblical and Talmudic period. Many of the Tannaim and Amoraim followed such crafts. The agricultural day-laborer, however, whose loss of his land made him dependent on the landowning farmer, was in danger of exploitation. His great danger was that he might lose his free status through debt. Against this eventuality the land laws and other legislation to which we have already referred sought to protect him. Such also is the intent of the law providing for the cancellation of debts in the sabbatical year (Deut. 15, 1-3). Another Biblical law in the interest of the free laborer insists on the prompt payment of his wages: (Deut. 24, 14; Lev. 19, 13).

The Talmud, also, has many regulations in the interest of the laborer. The hours of labor are regulated by local custom and the employer cannot compel overtime work even if he pays in excess of the customary wages (B.M. 83a). An employe may quit work at any time and is entitled to receive full pay for as much work as he has done; except that, if he is engaged in work the cessation of which would be destructive of the material worked on or would otherwise put the employer to extraordinary expense, the employer may require him to make good the loss—but not in excess of his wages (B.M. 16b). If engaged by the week or for a longer period of time, at so much a day, there is no deduction of wages on account of the sabbaths on which no work is done (B.M. 58a). One of the most interesting examples of the rabbinic attitude toward the priority of personal rights over property rights is the case cited in the Talmud, of the porters who carried a cask of wine for Rabbah bar bar Channah and broke it on the way, spilling the wine. He demanded payment and held their coats as a pledge. Rav,

before whom they brought their complaint immediately ordered their employer to return the pledge. When he had done so, they complained further that they had worked all day and were hungry, and Rav ordered their employer to pay them their wages. All this, although technically, they were legally responsible as paid custodians for the property entrusted to their care. The sole authority that Rav gives for his judgment in response to Rabbah bar bar Chanah's persistent inquiry, "is this the law?" is the verse in Proverbs 2, 20, "That thou mayest walk in the ways of good men and keep the paths of the righteous" (B.M. 83a).

V

The above brief discussion of the social legislation of the Jews in regard to property rights, interest and profit, and labor seems to me to indicate an affirmative orientation of Jewish tradition toward the forces that make for the establishment of a cooperative social commonwealth and an opposition toward those forces which would preserve the *status quo* as nearly as possible, on the basis of the sacredness of private property. We have seen with what solicitude the law sought to protect the liberty and economic independence of the individual and to prevent the economic exploitation of the weak by the strong; how it sought to mitigate slavery and ultimately to abolish it; how it sought to prevent the debtor from losing his liberty and property to the creditor; how it sought to give every individual access to the land and thus prevent the private monopoly of the natural resources. We have seen that even the change from the simple agricultural economy of the Bible to the more complex commercial economy of later times did not lead to the abandonment of these objectives, although it led to many adaptations of the general principles, as in the case of the laws of interest. Only since the so-called Emancipation, when Jewish life lost its independence completely, did Judaism surrender its effort to perfect the Law as an instrument for obtaining the social objective of full freedom of economic opportunity for all.

With such a tradition of emphasis on human values as of primary importance in all social legislation, the modern Jew is given a criterion by which to evaluate social movements. They are all to be judged by what they have of promise for a social order in which the worth of human life for every individual will be immeasurably enhanced. No definition of property rights can be held valid which would impede the realization of this ideal. We are committed by our tradition to champion the cause of the propertyless and the exploited. For the sake of the new life that we would create in Palestine and the influence which we would have Jewry exert on the general community, we should translate that commitment into the duty to further the equal rights of all human beings to serve God by developing to the utmost their latent powers in creative activity for the general good.

The Reconstructionist

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BOOK REVIEW

Human Exploitation

"HUMAN EXPLOITATION IN THE UNITED STATES," Norman Thomas; Frederick A. Stokes Co., New York, 1934.

IN *Human Exploitation,* Norman Thomas presents convincing evidence that even in its blooming days preceding the crash, capitalism was unworthy of moral sanction because it was maintaining itself by a savage exploitation of the unprivileged elements of America—the great masses of our people.

In this, the richest country in the world, with the material resources and the technological equipment to create economic abundance for all, one-third of our people have had to get along on family incomes that never exceeded $1,200 a year. Over one-third of the homes in our large cities and small towns have never had such "luxuries" as sanitary plumbing. The average annual wage paid to an American worker in 1926 was $1,376, less than what the Department of Labor has described as a minimum budget "necessary to maintain a family of five at a level of health and decency for one year." There are of course those whose incomes never equalled $1,376—the share croppers in the South, for example, never earning more than an average of $210 a year! Even more tragic is the fact that labor's share in the social income has actually fallen with the steady increase in the volume of production. In 1849 a wage earner received as wages 23.3 per cent of the value of the finished product, and 51.1 per cent of the value added to the raw material by his labor; in 1929 the percentages were 16.5 and 36.2, respectively.

Low wages do not, of course, tell the complete tale of labor's exploitation. Mr. Thomas cites heartbreaking facts about the conditions under which our men have worked—the long hours, the unsanitary surroundings, the terrific speed-up, and the terror used by the employers to prevent their men from collective action to improve their conditions of life. He also describes the exploitation of the small man as a farmer, as a consumer, as an investor, and as a small business man. In special chapters he deals with the added exploitation suffered by the negroes and the working class women and children.

Has the New Deal done anything to alleviate the condition of our exploited population? Mr. Thomas admits that it has been more generous in relief to the unemployed, and that it was originally more favorable to the organization of labor than the old deal. But he marshals enough evidence to show that in its gradual unfoldment, the New Deal has forgotten the "forgotten man" and that the mass exploitation continues unabated. Mr. Roosevelt's talk about the "more abundant life" has merely enabled him "to present his state capitalism—economically not dissimilar to fascism—in the garb of social and political liberalism rather than of ruthless dictatorship." For most Americans, the more abundant life is not as yet in the making.

For religious people, particularly, the challenge in this book is clear. To be sure, no social order will ever measure up to religion's ethical absolutes of justice, good will, and the right of every human personality to complete self-realization. But the degree to which a social order may approximate these values increases constantly with the increase in the volume of production that makes available an increasingly larger supply of economic goods on

which, among other things, the realization of these values depends. In an era of industrialism which has the capacity to produce universal abundance, it is obviously immoral to sanction a social system which maintains itself at such a terrific cost in human want.

Mr. Thomas does not argue directly for specific political instruments that will usher in the new social order. But what the nature of the new social order must be he indicates clearly: we must socialize our natural resources and technological equipment and produce for use, not profit. Those who take their religion seriously and have tried to reckon with the issues raised by Mr. Thomas will have to agree that this is the next stage in the social and ethical progress of humanity.

BEN ZION BOKSER.

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